



**FACULTY OF JURIDICAL SCIENCES**

**COURSE: LL.M 1 Year**

**Semester: IInd**

**GROUP: 1. Constitutional and Administrative Law**

**2. Corporate and Business Law**

**3. Criminal and Security Law**

**SUBJECT: : LAW AND JUSTICE IN A**

**GLOBALISING WORLD**

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**NAME OF FACULTY: Ms. Anjali Dixit, Assistant Professor**

# Lecture- 16



## LECTURE 16: Law and justice as per Natural law school

Natural school of law is generally regarded as the law of nature, divine law or the law that is universal and eternal in nature. It has been given different meanings at different points of time and though it is created by man, it is found through the nature of an individual. It is mostly influenced by religion. The central idea of this theory is that there is a higher law based on morality against which the validity of human law can be measured. There is a belief that there are certain moral laws that cannot go against without losing its moral or legal character. If legislation is not moral it is not law. There is an essential connection between law and morality in this school of law.

### Division of Natural Law

Natural law can be broadly divided into four classes:

1. Ancient theories
2. Medieval theories
3. Renaissance theories
4. Modern theories

### Ancient Theories

#### Greece

The Greek thinkers developed the idea of natural law and laid down its essential features. At that time in Greece, there was great political instability and it was thought by many that law is made only to serve the interest of the strong, but the same situation made some other jurists think in other ways, they saw this as an opportunity to develop new universal principles that would tackle and control tyranny and arbitrariness of government.

#### Socrates view on Natural Law

Socrates believed that as there is natural physical law there is also natural law. In his concept of natural law man has his own insight which makes him know of the things whether they are good or bad, it is this insight according to him by which a man is able to inculcate the moral values in him, the only way to judge the basis of law according to Socrates is man's insight. Through his theory, Socrates wanted to ensure peace and stability in the region which was one of the principle demands of that time.

#### Aristotle's view on Natural Law

Aristotle's concept of natural law is different from that of Socrates, he divides the life of man in 2 parts, first, he says that man is the creature which is created by God and second he possesses the quality of reason by which he can develop his own will. It is this reason through which one can discover the principle of natural justice. Aristotle is considered to be the founding father of natural law school and gave this theory a very solid ground so that it could develop naturally.

#### Rome

#### Stoics view on Natural Law

Stoics were inspired by Aristotle's theory and based on Aristotle's theory developed his own theory of natural law but made some key changes and made it more ethical. According to him, the world is governed by reason. Man's reason is also a part of this world, therefore when he lives according to reason he lives according to nature or lives naturally. One of the duties of man is to obey the law of nature as according to Stoics law of nature is binding on everyone and positive law must conform to the natural law.

#### Influence of Stoics theory

The theory of Stoics had a great influence upon the jurists during the republican period, as many of the jurists started paying more attention to natural law. Natural law helped Roman people to transform their rigid lives into a cosmopolitan one. Sometimes the Roman courts also applied the principle of natural law in order to deal with cases that involved foreign people, in this way natural law helped in the development of Roman law.

#### Medieval Theories

## Aquinas

Catholic philosophers and theologians moved away from the orthodox interpretation of natural law and gave a more logical and systematic theory of natural law. Thomas Aquinas defined law as the obedience of reason for the common good made by him who has the care of the community and promulgated. He divided the law into four stages.

1. Law of God
2. Natural law
3. Divine law
4. Human laws

Natural law is that part which reveals itself in natural reason. This is applied by human beings to govern their affairs and relations. According to Aquinas positive law must conform to natural law, positive law is valid only to the extent to which it is compatible with natural law.

### Merits of Aquinas theory

Thomas Aquinas perfectly blended Aristotle's theory with that of Christian faith and built a very elastic and logical theory of natural law. He pleaded for establishing the authority of the church over the state, according to him, even the sovereign has limited powers. He identified natural law with reason, gave sanctity to the social and political organization and pleaded hard for preserving social stability. Catholic modern jurist have built upon the theory of Aquinas but have modified his theory according to the changing needs and circumstances.

### Renaissance Theories

#### Introduction

This period saw major changes in all aspects of knowledge, this period was marked by the emergence of new ideas, new branches of knowledge and discoveries of science shattered the foundation of established values. Secondly, the developments in the field of commerce led to the emergence of new classes that wanted more protection from the states. It gave birth to the concept of nationalism. All these factors together overthrew the dominance of the church. New theories supporting the sovereignty of the state started coming up. The reason was the foundation stone of all these theories. The natural law theories of this age also have some characteristics. This theory proceeds with a belief that a social contract is the basis of society.

### Theories of Social Contract

Social contract theory presupposes a state of nature, various philosophers have described their own state of nature. In simple terms state of nature is the condition before a contract has been entered into, whatever may be the situation people entered into a contract either with themselves or with a single person under where philosophers are very important to understand the development of natural law during the Renaissance period. These philosophers are:

1. Thomas Hobbes
2. John Locke
3. Rousseau

#### Thomas Hobbes

##### Hobbes State of nature

Under his state of nature, man lived in a chaotic state, according to him, man's life in a state of nature was that of fear and selfishness. It was solitary, nasty, brutish and short.

##### Hobbes Contract

Under the prevailing circumstances, people, in order to get rid of their miseries, entered into a contract under which they surrendered all their rights to a single person. The law of nature can be discovered by reason which says what a man should do or not do. Man has a natural desire for security and order, this can be achieved only by establishing a superior authority that must command authority. Therefore he advises the sovereign that he must command with the natural law.

##### Hobbes support for Absolutism

Hobbes theory of natural law is a plea to support the absolute authority of the sovereign. He advocated for the established order, he stood for stable and secure governments.

#### John Locke

## Locke's State of Nature

Locke's view on the state of nature was completely different from that of Hobbes. He also interpreted the natural law in a different way. Locke was in favor of individualism and therefore for him, natural law meant giving individuals more power than the sovereign. Locke's state of nature was a golden age for man, but as the society grew and people started establishing the concept of property, people become insecure about their property.

## Locke's Contract

It was for the purpose of protection of property that man entered into a social contract. Under this contract, he did not surrender all his rights, but only a part of them. All these rights were surrendered in order to maintain order and to enforce the law of nature. The natural rights like the right to liberty, property, and life were to be retained by man.

## Locke's support to Individual Liberty

Locke stood for individual liberty and advocated that the powers of the sovereign is not unlimited. According to Locke individual has a right to protest against the sovereign if he is unable to protect the rights of the individual, individuals also have a right to overthrow the existing government. According to him an individual's right to liberty, property, and life are the basic natural rights and the sovereign must realize these rights and take a decision, taking into consideration the above-mentioned rights.

## Rousseau

### Rousseau's state of nature

Under Rousseau, natural law and social contract received a new interpretation. For him, a social contract is the hypothetical construction of reason. Before the social contract man lived a happy life, there was equality amongst men.

### Rousseau's Contract

According to Rousseau man entered into a contract in order to preserve the rights of equality and freedom, they surrendered their rights not to a single individual but to the community as a whole which Rousseau calls it as the general will.

### Theory of General Will

According to Rousseau, it is the duty of an individual to obey the general will because in that way he is obeying his own will. The government and laws made must conform itself with the general will and if they are not able to so that they could be overthrown, in brief Rousseau stood for the interest of the community rather than the interest of the individual, his natural law theory stood for equality and freedom of men.

## Modern theories

### Nineteenth Century

#### The decline of Natural Law theories

The 19th century saw the decline of natural law, the natural law theories reflected more or less the great economic and political changes which had taken place in Europe. Reason or rationalism was the spirit of the eighteenth-century thought. The problems created by the new changes and developments demanded political and concrete solutions. Individualism gave way to collectivistic outlook, modern sciences and political theories started preaching that there are no absolute and unchangeable principles. Many historians rejected the social contract theory by saying that it was a myth. All these factors gave a strong blow to natural law.

### Twentieth Century

#### The revival of Natural law theories

During the end of the 19th century, we saw the revival of natural law theories mainly due to the following reasons:

1. It emerged as a reaction against the legal theories which had exaggerated the importance of positive law.
2. It was realized that abstract thinking was not completely futile.
3. Positivist theories failed to solve the problems created by the changed social conditions.
4. The ideologies of Fascism and also led to the revival of natural law theories, as at that time during the two world wars, the world witnessed great destruction of human lives and property

and principles of natural law were approached in order to attain peace.

### SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Stoics was inspired by Aristotle's theory and based on Aristotle's theory developed his own theory of natural law	True	False
2.	One of the duties of man is to obey the law of nature as according to Stoics law of nature is binding on everyone and positive law must conform to the natural law.	True	False
3.	The theory of Stoics had a great influence upon the jurists during the republican period, as many of the jurists started paying more attention to natural law.	True	False
4.	Thomas Aquinas defined law as the obedience of reason for the common good made by him who has the care of the community and promulgated.	True	False
5.	atural law is that part which reveals itself in natural reason.	True	False

**Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)**